PART IV

SECTION 1-B

CENTRAL ACTS AND ORDINANCES

GOVERNMENT OF KARNATAKA

LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 46 LCA 78.

Bangalore, dated 12th September 1978.

Ordered that the Insolvency Laws (Amendment) Act, 1978 (No. 28 of 1978) published in Part II, Section 1 of the Gazette of India, Extraordinary dated 5th August 1978 be republished in *Karnataka Gazette* for general information.

By Order and in the name of the Governor of Karnataka,

A. NEELAKANTARYA,
Under Secy. to Govt. Food and Forest Dept.
Department of Law and Parliamentary Affairs.

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 5th August, 1978/Sravana 14, 1900 *(Saka)*.

The following Act of Parliament received the assent of President on the 4th August, 1978, and is hereby published for general information :—

THE INSOLVENCY LAWS (AMENDMENT) ACT, 1978

No. 28 OF 1978

[*4th August, 1978*]

An Act further to amend the Presidency-towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows :—

1. **Short title and commencement.**—(1) This Act may be called the Insolvency Laws (Amendment) Act, 1978.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Act 3 of 1909.—In the Presidency-towns Insolvency Act, 1909,—

(a) section 9 (excluding the *Explanation*) shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely :—

"(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein :

Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice—

(a) in a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub-section ; and

(b) in a case where such application is rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later :

Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the Court therefor.

(3) An insolvency notice under sub-section (2) shall—

(a) be in the prescribed form ;

(b) be served in the prescribed manner ;

(c) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent ;

(d) specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing, whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the Court granting leave for the service of such notice ;

(e) state the consequences of non-compliance with the notice.

(4) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Act 3 of 1909.—In the Presidency-towns Insolvency Act, 1909,—

(a) section 9 (excluding the *Explanation*) shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely :—

" (2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein :

Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice—

(a) in a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub-section ; and

(b) in a case where such application is rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later :

Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the Court therefor.

(3) An insolvency notice under sub-section (2) shall—

(a) be in the prescribed form ;

(b) be served in the prescribed manner ;

(c) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent ;

(d) specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing, whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the Court granting leave for the service of such notice ;

(e) state the consequences of non-compliance with the notice.

(4) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under

the decree or order exceeds the amount actually due, unless the debtor, within the period specified in the insolvency notice for its compliance, gives notice to the creditor that the sum specified in the insolvency notice does not correctly represent the amount due under the decree or order:

Provided that if the debtor does not give any such notice as aforesaid, he shall be deemed to have complied with the insolvency notice if, within the period specified therein for its compliance, he takes such steps as would have constituted a compliance with the insolvency notice had the actual amount due been correctly specified therein.

(5) Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the Court to set aside the insolvency notice on any of the following grounds, namely :—

(a) that he has a counter-claim or set-off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed ;

(b) that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that—

(i) he has made an application before the competent authority under such law for the setting aside of the decree or order; or

(ii) the time allowed for the making of such application has not expired ;

(c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application. " ;

(b) in section 112, in sub-section (2), after clause (m), the following clause shall be inserted, namely :—

"(mm) the form of the insolvency notice under clause (a), and the manner in which such notice may be served under clause (b), of sub section (3) of section 9;".

3. **Amendment of Act 5 of 1920.**—In the Provincial Insolvency Act, 1920,—

(a) section 6 (excluding the *Explanation*) shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely :—

"(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not

been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein:

Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice—

(a) in a case where such application is allowed by the District Court, he shall not be deemed to have committed an act of insolvency under this sub-section; and

(b) in a case where such application is rejected by the District Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later:

Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the District Court therefor.

(3) An insolvency notice under sub-section (2) shall—

(a) be in the prescribed form;

(b) be served in the prescribed manner;

(c) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent;

(d) specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the District Court granting leave for the service of such notice;

(e) state the consequences of non-compliance with the notice

(4) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under the decree or order exceeds the amount actually due, unless the debtor within the period specified in the insolvency notice for its compliance gives notice to the creditor that the sum specified in the insolvency notice does not correctly represent the amount due under the decree or order:

Provided that if the debtor does not give any such notice as aforesaid, he shall be deemed to have complied with the insolvency notice if, within the period specified therein for its compliance, he takes such steps as would have constituted a compliance with the insolvency notice had the actual amount due been correctly specified therein.

(5) Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the District Court to set aside the insolvency notice on any of the following grounds, namely :—

(a) that he has a counter-claim or set-off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed ;

(b) that he is entitled to have the decree or order set aside under any law providing for the rel ef of indebtedness and that—

(i) he has made an application before the competent authority under such law for the setting aside of the decree or order ; or

(ii) the time allowed for the making of such application has not expired ;

(c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.'';

(b) in section 79, in sub-section (2), clause (á) shall be relettered as clause (aa) thereof and before clause (aa) as so relettered, the following clause shall be inserted, namely :—

''(a) the form of the insolvency notice under clause (a), and the manner in which such notice may be served under clause (b), of sub-section (3) of section 6 ; ''.

S. HARIHARA IYER,
Secretary to the Govt of India

LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 49 LCA 78.
Bangalore, dated 12th September, 1978.

Ordered that the Customs Tariff (Amendment) (Act, 1978, No. 26 of 1978), published in Part II, Section 1 of the *Gazette of India,* Extraordinary dated 2nd August, 1978 be republished in the *Karnataka Gazette,* for general information.

By Order and in the name of the Governor of Karnataka,

A. NEELAKANTARYA,

23 *Under Secretary to Government,*
Department of Law and Parliamentary Affairs.